

# LYNCHBURG CITY COUNCIL

## Agenda Item Summary

MEETING DATE: **September 28, 2004, Work Session**

AGENDA ITEM NO.: 3

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION:

INFORMATION: **X**

ITEM TITLE: **Water Resources Planning 101 – Water Contracts with Counties**

RECOMMENDATION: This is provided for informational purposes. Staff is seeking Council input and direction related to the water purchase contracts with the surrounding Service Authorities.

SUMMARY: The City of Lynchburg currently sells water to Amherst County Service Authority, Bedford County Public Service Authority, and Campbell County Utilities and Service Authority via wholesale water purchase contracts which are up for renewal June 30, 2005. This presentation provides an overview of the Lynchburg water system, current and future demands, water purchase contracts and their current status. Attachment 1 provides more detailed information on these issues.

PRIOR ACTION(S): None

FISCAL IMPACT: Varies depending upon decisions related to the water contracts.

CONTACT(S):

Timothy A. Mitchell, P.E., Director of Utilities, 455-4252

L. Kimball Payne, III, City Manager, 455-3990

Bruce McNabb, P.E., Director of Public Works, 455-3946

ATTACHMENT(S):

Attachment 1 - Overview of Lynchburg's Water System and County Water Contracts

Attachment 2 – Water System Map

Attachment 3 - Campbell County Utilities and Service Water Purchase Contract

REVIEWED BY: lkp

**Attachment 1**  
**Overview of Lynchburg's Water System**  
**and**  
**County Service Authorities' Water Contracts**  
**September 28, 2004**

**I. Water System Information**

A. Source Information

1. Primary Source – Pedlar Reservoir

- a. Original dam constructed in 1907, subsequently raised twice.
- b. Current storage capacity 1.13 billion gallons.
- c. \*Supplies up to a total of 13 million gallons per day (mgd) split between the Abert and College Hill Filtration Plants via a 22 mile, 36" diameter, gravity pipe line.

\* Assuming water flowing over spillway.

2. Secondary Source – James River

- a. Rights date back to a Crown Grant – up to 1/5<sup>th</sup> of the flow of the river, on average over 150 mgd. These rights are potentially subject to State and Federal regulatory powers.
- b. Two James River pump stations, currently with a combined maximum capacity of 22 mgd.

B. Treatment Information

1. Abert Filtration Plant

- a. Constructed in 1974.
- b. Conventional high rate filter plant.
- c. 12 mgd treatment capacity.
- d. Currently undergoing filter renovations.
- e. Average daily production approximately 5.5 mgd.

2. College Hill

- a. Constructed in 1954 (50 years old!)
- b. Conventional high rate filter plant.
- c. 14 mgd treatment capacity.
- d. Alternative disinfection process scheduled for construction this Fall.
- e. Average daily production approximately 5.5 mgd.

C. Distribution System

- 1. Over 450 miles of pipe from 1" to 30".
- 2. Age varies from newly constructed lines, tanks, and pump stations to lines in excess of 150 years old.
- 3. 30 million gallons of storage capacity, (approximately 3 days demand).

D. Summary

Theoretical treatment capacity 26 mgd, realistic treatment and delivery capacity 18-19 mgd under current conditions.

(Refer to Attachment 2 for map of the City's water system, specifically highlighting portions of the system that serve the Counties)

**II. Demand Information**

A. Total Historical Demands (Combined City and Counties)

*Table 1 - Combined City and Counties Historic Demands*

<b>Fiscal Year</b>	<b>Total Water Produced (mgd)</b>
FY 2000	12.09
FY 2001	10.92
FY 2002	11.47
FY 2003	10.67
FY 2004	10.66

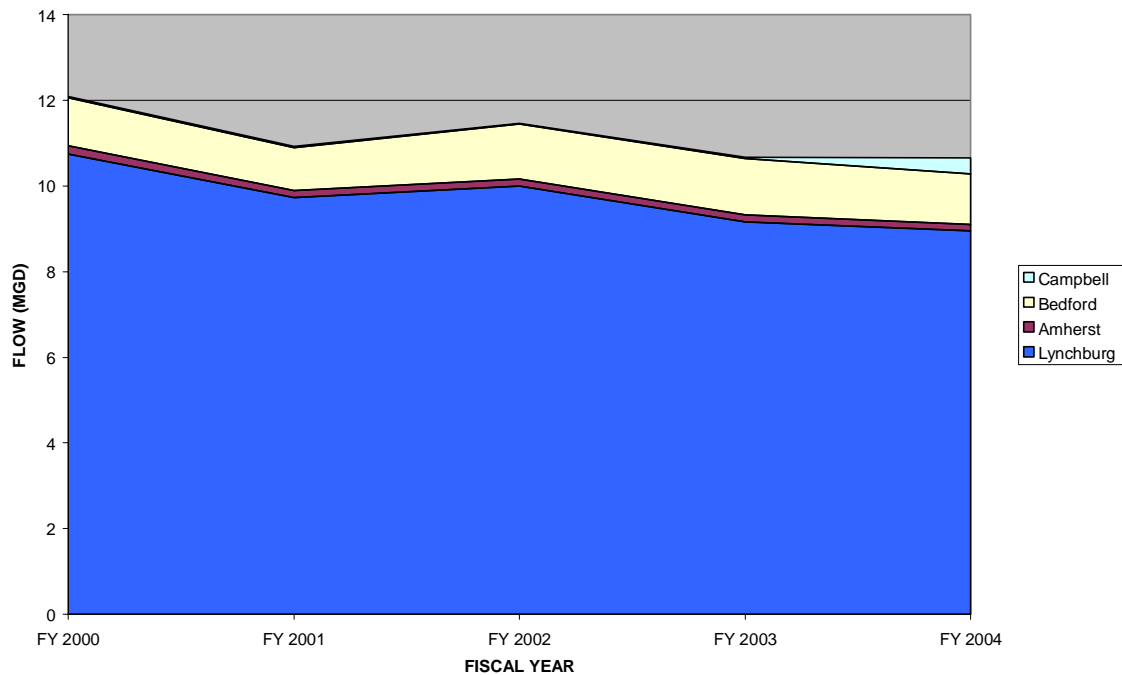
B. Total Historical Demands (City only)

*Table 2 - City Historic Demands*

<b>Fiscal Year</b>	<b>Total Water Produced (mgd)</b>
FY 2000	10.75
FY 2001	9.73
FY 2002	10.00
FY 2003	9.17
FY 2004	8.95

(Refer to Figure 2 for total historic flows from the City and Counties – Note overall decline in production, specifically related to the City)

FIGURE 2 - HISTORIC WATER CONSUMPTION



C. Refer to Table 3 for total future demands on the City system.

Table 3 - FUTURE DEMAND (mgd)

	2005	2010	2020	2030
AMHERST	0.18	0.18	0.18	0.18
BEDFORD	1.30	1.82	2.53	3.90
CAMPBELL	0.53	0.65	1.00	1.80
LYNCHBURG	9.80	10.00	10.50	11.00
*APPOMATTOX / MT. ATHOS	0.00	0.75	1.50	2.80
<b>TOTAL</b>	<b>11.81</b>	<b>12.65</b>	<b>14.21</b>	<b>16.88</b>

\* Potential future demands from additional flows in the Mt. Athos area and Appomattox

D. Regional permitted capacities and demands are as follows (Includes City of Lynchburg, Town of Appomattox, Town of Amherst, Amherst County Service Authority, Town of Altavista, Town of Brookneal, Campbell County Utilities and Service Authority, Bedford County Public Service Authority, and the City of Bedford:

Total Permitted Capacities	>	41 mgd
Total Demands	<	19 mgd
Excess Capacity	=	22 mgd

### III. Regulatory Issues

- A. Proposed legislation for local, regional, and state water supply planning requiring preparation of a local water supply plan or participation in a regional water supply plan. Regional cooperation encouraged.
- B. Safe Drinking Water Act compliance.

### IV. Current Contracts

- A. All three County contracts are essentially the same.
- B. All expire June 30, 2005.\*
- C. Counties can not resell water outside their service area without City of Lynchburg approval except in emergency situations.
- D. If mutually agreed upon City facilities may be modified to provide enhanced service to the Counties. Cost sharing to be provided by the system wide sharing of Capital Expenditures.
- E. Any water restrictions applied to City customers shall also apply to County customers.
- F. Intent to sell water to the Counties as long as the City determines it is in a position to do so.
- G. Provisional rates are established each year based on the system wide cost of supplying water less cost items that are not applicable to providing water service to the Counties plus a rate of return factor that varies based upon consumption. Refer to Table 3 for a rate comparison history.
- H. Year end settling up occurs based on final audited budgeted numbers and actual consumption.

**Table 3 – Rate Comparison**

<b>County</b>	<b>FY01 Rates</b>	<b>FY02 Rates</b>	<b>FY03 Rates</b>	<b>FY04 Rates</b>	<b>FY05 Rates</b>
Amherst	\$1.51	\$1.44	\$1.59	\$1.63	\$1.76
Bedford	\$1.46	\$1.37	\$1.52	\$1.55	\$1.68
*Campbell	\$1.51	\$1.44	\$1.59	\$1.63	\$1.76
**City	\$1.62	\$1.67	\$1.67	\$1.67	\$1.75

\*Supplemental agreement with Campbell essentially commits the City to a continued contract through 2027.

\*\*Includes Block 1 rate only – Blocks 2 & 3 phased out from FY02-FY05.

**RECEIVED**

## WATER PURCHASE CONTRACT

AUG 11 1995

FINANCE DEPT. DIRECTOR

THIS CONTRACT, made this 27<sup>th</sup> day of July 1995, by and between the Campbell County Utilities and Service Authority, hereinafter referred to as the "Authority", and the City of Lynchburg, a municipal corporation of the Commonwealth of Virginia, hereinafter referred to as the "City";

## WITNESSETH

That for and in consideration of the mutual benefits resulting from the undertakings of the parties to this contract and the covenants and agreements contained herein, the Authority and the City covenant and agree, each with the other as follows:

I. GENERAL

A. Even though the existing contract which governs the sale and purchase of water between the two parties will not expire until October 31, 1995, the parties mutually agree that this new contract will become effective on July 1, 1995. Upon the effective date of this agreement, the existing contract will become null and void.

B. That it is in the mutual interest of the parties to cooperate as the City has the ability to treat and produce more water than is currently consumed by its customers, since the Authority has customers or future customers who cannot be economically served by the Authority's water production facilities, and that by jointly using the existing facilities of the City more fully both parties will recognize lower costs that will limit rate increases to their respective customers.

C. Therefore the City agrees to sell water to the Authority for resale to Authority customers. The Authority will primarily purchase water to serve the Vista Acres, Old Rustburg Road, and miscellaneous individual connections which existed on July 1, 1995. Additionally service will be purchased for areas in Bedford County located along Route 221. Bedford County will purchase this Route 221 customer base and assume water purchase responsibility in November, 1995, except for that area along Route 221 between the City Limits and Graves Mill Road which the Authority will maintain unless a purchase of said system by Bedford County is negotiated. The Authority retains the right to maintain existing master meter connections which have been installed at the Authority's expense on Timberlake Road at the City Limits, Leesville Road at the City Limits, and Wards Road at the City Limits for use under emergency conditions, after consultation with the City Utilities staff. Also included as part of this water purchase contract is capacity to serve the proposed Candler Mountain area if such area is developed during the term of this contract. Nothing in this agreement shall limit the Authority from expanding its current service area to other parts of Campbell County and using City water to supply service for such expansions provided such capacity is available. The Authority expects that its requirements for water will increase

with the development of Candler's Mountain and other areas of the County, and the City is willing to supply water to meet the Authority's increasing demands as long as the City determines that it is in a position to do so.

D. Should the City desire to enter into contracts for the sale of water with other political jurisdictions located outside the Authority's service area utilizing facilities constructed for the mutual benefit of both parties to this contract subject to the provisions in paragraph VIII.D. of this contract, the Authority and the City will work toward the establishment of an implementing contract containing terms and conditions mutually agreeable to both the Authority and the City.

E. Unless approved by the City, the Authority will not resell any water purchased from the City outside of its service areas. It shall be understood that an exception to this provision will be allowed in the event of emergencies.

## II. TERM and RENEWAL

A. This contract will be in force and effect for ten years from July 1, 1995 through June 30, 2005.

B. At the end of year eight (June 30, 2003) each party will notify the other of its intention to terminate the contract at the end of year ten (June 30, 2005) or to renew the contract as provided for in Section IIC below.

C. After year ten, the contract will be renewed in five year increments provided the parties give notice of their intention to renew two years prior to the end of the five year renewal period. Under this provision the first notification of intent to terminate the contract after the tenth year will be July 1, 2008.

D. The methodology described in Section V for determining the price of water sold by the City to the Authority shall apply to all water consumed by the Authority after July 1, 1995. (technically after regular meter readings in June, 1995).

## III. SERVICES PROVIDED

A. The City represents and warrants that the quality and pressure of water delivered to the Authority under this contract shall be the same as that furnished City customers in the area from the main or mains from which the water is taken by the Authority at the metering point or points at the time of delivery and shall meet the requirements of the Virginia Department of Health and/or other State or Federal agencies which have jurisdiction over public water supplies.

B. Initial delivery points will be at the locations specified in Appendix A. Future delivery points may be established as mutually agreed upon. The costs for constructing additional master meter facilities or other facilities requested by the Authority shall be the responsibility of the Authority and the costs for additional or revised facilities requested by the City shall

be the responsibility of the City.

C. The Authority shall be responsible for the provision of additional pumping and storage facilities to its system to meet the demands within its service area. Notwithstanding this, the Authority and the City may agree to modify City facilities to provide enhanced service within the Authority's service area. Cost sharing for these improvements shall be provided by the system-wide sharing of Capital Improvement Expenditures. When available the City may provide additional storage for the Authority.

D. Upon request by the Authority, the City may annually designate a portion of its pumping and storage capacity to satisfy regulatory requirements, provided such capacity is available in the City's system.

E. Nothing herein shall prevent the emergency purchase of water by either the City or the Authority from the interconnected systems of each party, provided the party furnishing water has the available capacity to meet the emergency needs of the requesting party. Master meters for such interconnection, other than the existing meters referred to in section 1.C., shall be installed and paid for by the party desiring the emergency connection. Water used by the Authority shall be added to the master bill and paid for at the rates herein defined. The quantity of water used by the City shall be deducted from the Authority's master bill prior to the application of the unit rate.

#### IV. CONNECTIONS and METERING

A. The City will install and maintain master meters at each major delivery point. The Authority and the City agree that it is in the best interests of both parties that the number of individual service connections from City lines that serve homes in Campbell County be kept to a minimum and that all delivery points be served by master meters wherever practical. Nonetheless individual service connections may be made to City transmission lines to serve Campbell County residents according to provisions established in Section IVB. below.

B. Individual service connections for Campbell County customers may be made to the City's transmission mains when and where there exists no water main that has been constructed by the Authority and there is no master meter. The connection and installation of the meter will be made by the City. The Authority will reimburse the City for the actual cost of such connection. The customers served by these connections will be billed as Authority customers and charged an availability fee by the Authority, all in accord with the Authority's schedule of rates and charges. It is agreed and understood by the Authority and the City that there may be situations where customers within the City are provided service with water that has been transported through lines owned by the Authority into lines owned by the City. The customers served by these lines will be billed as City customers.

C. To determine consumption totals for the Authority, all master meters and individual service meters for City customers that are fed by Authority lines will be read monthly by the City and all service meters connected directly to City mains for Authority customers will be read by the Authority monthly. Each party shall provide the other with an itemized listing of the meters read and the reading for each meter. Each party shall have the right to read



meters simultaneously for the purpose of verifying the accuracy of the readings. Total monthly consumption for the Authority shall be the sum of the measured flows through the City installed master meters and individual meters which serve County residents directly from City lines less the sum of the consumption recorded from City emergency use and individual meters served by Authority lines and any water used for line flushing or fire fighting purposes on the City lines served by the Authority.

D. Backflow prevention devices shall be provided by either party at new master meter locations to prevent water from leaving the lines of the party purchasing the water and entering the lines of the party selling the water. The backflow prevention devices will be installed and paid for by the party purchasing the water service.

E. The City or the Authority at its respective expense shall have the right to test and verify the accuracy of all master and service meters. If the accuracy of a tested meter is less than 95%, adjustments shall be made to cover the usage for the most recent 90 day consumption period.

F. The measurement basis for the City meters shall be in hundred cubic feet (HCF).

#### V. WATER CHARGES

A. The intent of the parties is for the City to sell water to the Authority at the City's system wide cost (SWC) to produce and transport water less those cost items not applicable to providing water service to the Authority, plus a rate of return (R) expressed as a percentage of this net cost. This rate will be stated as a Cost per Hundred Cubic Feet (\$/HCF).

B. The costs to provide water service to the Authority will equal operations, maintenance, and administrative expenses measured on the accrual basis of accounting; debt service based on actual principal and interest payments; and annual reserve fund additions to pay for equipment replacement/heavy maintenance, filter replacement and other capital items (expenditures that will be capitalized in accordance with generally accepted accounting principals); less the cost of: (1.) reading water meters in the City and locations other than the Authority's service area, (2.) billing and collecting water charges from the City's water customers, (3.) bad debt expenses related to the City customer water accounts, (4.) maintaining neighborhood water distribution lines (until more accurate data becomes available it will be assumed that 50% of the water line maintenance budget will be related to the maintenance of neighborhood water distribution lines), (5.) debt service and/or the annual cost of replacement and extension of small water mains 8" or less in diameter that are located in the City, and (6.) other costs to construct, operate, or maintain facilities or extensions that provide an exclusive benefit for an individual customer, other than the Authority, or do not provide any system wide benefit, shall be excluded from this calculation. In no event will depreciation or expenditure from annual reserve fund additions be included as part of the cost of determining water charges in accordance with this contract provision. The figure derived by this calculation is the net system wide water cost (NSWC).

C. Except for costs incurred in recognition of Sections III B and V B above, both parties

understand that if new cost items are included in the City's Water Utility Operating Fund budget, both the City and the Authority will share in these new expense items in proportion to the amount of water used by each party as related to the total system wide water consumption. Notwithstanding above, new cost items to be shared shall not include "payments in lieu of taxes".

D. The net system wide costs (NSWC) calculated in Section V B above are divided by the total system wide water consumption (as measured by the City's water Utility Billing System) to arrive at the Average Unit Cost (AUC) for water delivered to the Authority.

E. The Rate of Return Component (R) is equal to the Return Percentage, as shown below, times the AUC derived according to the procedures described in Section V D above. The Return Percentage will initially be set at 24%. As the Authority's annual consumption level increases to the levels shown below, the Return Percentage will decrease as shown.

<u>ANNUAL USE IN HCF</u>	<u>RETURN PERCENTAGE</u>
Less than 300,000 HCF	24%
300,000 to 350,000	23%
350,001 to 400,000	22%
400,001 to 450,000	21%
450,001 to 500,000	20%
500,001 to 550,000	19%
over 550,001	18%

The rate of Return Component is intended as compensation to the City for its investment in water facilities used by the Authority.

F. The rate at which water will be sold to the Authority will be equal to the AUC determined in Section V D above plus the R as determined in Section V E above. (See Exhibit B for a demonstration of this calculation)

G. Notwithstanding the above, for the duration of this contract the City will not sell water to the Authority at an amount that is less than its SWC per HCF to produce and transport water. For purposes of this contract provision the SWC equals the sum of all cost items in the City's annual Water Utility Operating Fund (including Reserves and debt service for Capital Fund Expenditures) divided by the annual system wide water consumption as measured by the City's Utility Billing system.

#### VI. BILLING and PAYMENTS

A. Annually, prior to the start of each fiscal year the City will establish a provisional billing rate. This provisional rate is calculated using the Water Utility Operating Fund budgeted costs less the deductions specified in Section V B, the applicable rate of return percentages and estimates of system wide water consumption.

B. The City will bill the Authority each month for the total monthly consumption as determined according to the provisions of Section IV using the provisional rate established

in Section VI. A above.

C. At the end of each fiscal year the actual costs, as defined in Section V above, will be derived from the City's audited financial statements and schedules and the system wide water consumption will be derived from data in the City's utility billing system. From this data an actual billing rate will be calculated. Differences between the annual billing total for water purchased under the provisional billing rate and the rate using the actual billing rate will be prorated over the remaining monthly billing of the next fiscal year. It is understood by the Authority and the City that these adjustments may result in either subtractions from or additions to the subsequent year's calculation of water charges to the Authority.

D. Amounts billed to the Authority will be paid within 30 days of the invoice date. Bills unpaid beyond 30 days will be subject to the same penalties as imposed upon other City customers. The Authority must notify the City in writing within 15 days of receipt of any bill for which there are questions. No penalties will be paid on any disputed charges ultimately settled for the Authority.

## VII. INDEMNIFICATION

A. Neither the Authority nor the City shall be liable in damages to the other for any act, omission, or circumstance occasioned by or in consequence of any act of God, strikes, lockouts, acts of public enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests, and restraints of rules and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not reasonably with the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the party claiming suspension. Such causes or contingencies affecting the performance hereunder by either the Authority or the City, however, shall not relieve it of liability in the event of its negligence or in the event of its failure to use due diligence nor shall such causes or contingencies affecting such performance relieve either party from its obligation to make payments of amounts then due hereafter in respect of water theretofore delivered.

B. To the extent that it is legally permissible to do so, the Authority will indemnify, hold harmless, and defend the City from liability on account of injury or damages to any person or any property resulting, directly or indirectly, from the negligence of the Authority in the distribution of water supplied by the City; and in the event that suit shall be brought against the City either independently or jointly with the Authority, then the Authority will pay such judgement with all costs and hold the City harmless therefrom.

C. To the extent that it is legally permissible to do so, the City will indemnify, hold harmless, and defend the Authority from liability on account of any injury or damages to any person or property resulting, directly or indirectly, from the negligence of the City in the distribution of water supplied to the Authority; and in the event that suit shall be brought

against the Authority, either independently or jointly with the City, the City will pay such judgement with all costs and hold the Authority harmless therefrom.

#### VIII. OTHER ITEMS

A. Title to water facilities in Campbell County constructed or provided by the Authority, or subsequently acquired by the Authority shall vest and remain vested in the Authority in fee simple. Title to water facilities in Campbell County constructed or provided by the City or subsequently acquired by the City shall vest and remain vested in the City in fee simple.

B. Other than for circumstances described in Section IV B above, the City will not sell water to customers in Campbell County except as may be given by written permission of the Authority. In a like manner, the Authority shall not sell water to customers within the City except as may be given written permission by the City.

C. The City shall have the right, with written concurrence of the Authority (said concurrence shall not be unreasonably withheld) to obtain the permission of Campbell County and such other regulatory agencies as may have jurisdiction, to extend its water mains and lines within Campbell County to connect sections or parts of the City's and/or other jurisdictions' water distribution system. The Authority will have the right to connect to these mains and lines for service of its customers as provided for in Section IV. All costs associated with such extensions and providing maintenance to these City lines shall be the responsibility of the City. The City shall comply with the standards, rules, and regulations of all agencies having jurisdiction in this matter.

D. The City and the Authority may agree to construct jointly owned facilities outside the City in the Authority's service area for the purpose of the City providing water service to areas outside the Authority's service area not presently served by the Authority's water system. Any such agreement shall contain terms and conditions mutually agreeable to the City and the Authority. Capital costs for the construction as well as operation and maintenance costs for such facilities shall be shared on a mutually agreeable basis, and any water utilized or resold by City in these joint owned facilities shall be deducted from the Authority's metered consumption at the point of delivery. Such costs shall be clearly delineated in and mutually agreed upon in a separate supplemental written contract to this contract, it being understood and agreed that both parties to this contract shall have the right to use such jointly owned facilities beyond the expiration date of this contract.

E. Periodically, but at least annually, the City will provide the Authority with copies of its water capital improvements program, operating budget, cost allocation plan, and other relevant planning documents. At least annually the Authority will provide the City with estimates of futures water demands for each water delivery point and the City will provide the Authority with estimates of its ability to supply these demands.

F. The City reserves the right to restrict Authority water usage during drought conditions or other emergencies. Restrictions placed on water sold to the Authority shall be by the same percentage reduction as restrictions placed upon other City customers.

IX. REPRESENTATIONS

A. The making, execution, and delivery of this contract, has been induced by no representations, statements, warranties, or agreements other than those herein expressed. This contract embodies the entire understanding of the parties hereto and, except for the attached appendix, there are no further or other agreements or understandings, written or oral in effect between the parties related to the subject matter hereof, and this contract supersedes all previous agreements that may have existed between the parties hereto with respect to the subject of equal formality signed by the parties hereto or by their duly authorized officers or representatives.

B. Modifications, additions, amendments, and or alterations to any of the provisions of this contract shall be in writing and signed by duly authorized representatives of the parties hereto.

C. This contract shall be governed in its entirety by the laws of the Commonwealth of Virginia.

D. In the event of any occurrence rendering the Authority or City incapable of performing under this contract, any successor of the Authority or City whether the result of legal process, assignment, or otherwise, shall succeed to the rights of its predecessor hereunder.

CAMPBELL COUNTY UTILITIES AND  
SERVICE AUTHORITY

BY: *Davis P. Ballowe*

Davis P. Ballowe, Chairman

ATTEST: *James W. Givens*

James W. Givens, Secretary

THE CITY OF LYNCHBURG, a Municipal Corporation

BY: *Charles F. Church*

Charles F. Church, City Manager

ATTEST: *Patricia W. Post*

Clerk of Council

## FIRST SUPPLEMENT TO WATER PURCHASE CONTRACT

THIS FIRST SUPPLEMENT TO WATER PURCHASE CONTRACT, made and dated this 30<sup>th</sup> day of May, 2002, by and between the Campbell County Utilities and Service Authority, hereinafter "Authority", the City of Lynchburg, Virginia, hereinafter "City" and the County of Campbell, Virginia, hereinafter "County".

WHEREAS, The Authority and City entered into a Water Purchase Contract dated July 27, 1995 ("Contract"); and,

WHEREAS, the Contract provides, among other things, for the sale by the City of potable water to the Authority for resale to the Authority's customers within specified areas of Campbell County and to other portions of Campbell County provided the City has available capacity for such expansion; and,

WHEREAS, the Authority desires to expand its water system to serve the Route 460 East/Mt. Athos Service Area of Campbell County as defined in Exhibit A, hereto attached and by reference made a part hereof, (the "Route 460 East / Mt. Athos Service Area"); and

WHEREAS, the parties desire to supplement the terms of the Contract as set forth herein.

NOW, THEREFORE WITNESS, that for and in consideration of the premises set forth herein the parties agree as follows:

1. The City will provide up to 1.136 million gallons of water per day (the "Supplemental Water") for use by the Authority in supplying potable water service to the Authority's customers in the Route 460 East/ Mt. Athos Service Area. The water being supplied under this Supplemental Agreement is for the primary purpose of meeting the growth and future development needs of existing businesses in the Route 460 East/Mt. Athos Service Area. In addition to supplying water to meet the needs of existing businesses in the Route 460 East/Mt. Athos Area, approximately 86,000 gallons of water per day is being supplied to the Authority for its own uses. This Supplemental Water is in addition to any water supplied pursuant to Section I.C. of the Contract.
2. The parties acknowledge that Lynchburg Foundry Company, d/b/a Internet Archer Creek Foundry ("Internet") was an original planned participant in the project as outlined in the "Feasibility Study for Water Service Along Route 460 Corridor from City of Lynchburg to Town of Appomattox", as prepared by Wiley & Wilson, Lynchburg, Virginia, dated January 16, 1998 (the "Wiley & Wilson Feasibility Study"). The parties agree that if Internet decides it would like to purchase water from the Authority or other industrial development occurs within the Route 460/Mt. Athos Service Area that the sale of additional water to the Authority by the City will be negotiated in good faith.

3. The City and the Authority shall construct the mains required to furnish the Supplemental Water to the Route 460 East/ Mt. Athos Service Area along with the potential future capacity specified in the Wiley & Wilson Feasibility Study in accordance with the Wiley & Wilson Feasibility Study. Subject to any act of God, strikes, lockouts, acts of public enemies, wars, terrorists attacks, blockades, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, arrests, and restraints of rules and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority which had been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome, the Authority and City agree that the improvements necessary to provide service to the Route 460 East/ Mt. Athos Service Area shall be operational by June 30, 2003. The date that such improvements are fully operational shall referred to as the "Service Date."
4. It is the City's intent to provide potable water capacity to the Route 460 East/ Mt. Athos Service Area subject to the same terms and conditions set forth in the Contract and this Supplement to Water Purchase Contract for a minimum of 25 years. Consequently, for a period of 25 years following the Service Date, as defined above, the City agrees that it will not terminate the Contract under Section II.B. or C of the Contract unless the City, in its reasonable discretion and acting in good faith, determines that the water being sold under this Supplemental Agreement is necessary to meet the needs of the City, its citizens, businesses or industries and the City, in its reasonable discretion and acting in good faith, determines that there is no other reasonable alternative for supplying the City's water needs. The Authority and City agree that rates charged by the City are subject to good faith renegotiation at the specified Contract renewal dates.
5. Effective on the Service Date, the Authority agrees to purchase water from the City based on one of the following:
  - a. Except as set forth in paragraphs 5.b, 5.c., and 5.d. below, each month the City will bill and the Authority will pay for the water actually consumed in a month as metered at the City/County boundary line on Route 460 East.
  - b. In the event that BWX Technologies Inc. ("BWXT") in any month fails to consume an average of 500,000 gallons per day but pays for 500,000 gallons per day as provided by its agreement with the Authority, then the Authority will pay the City the greater of the water actually consumed or 500,000 gallons per day multiplied by the number of days in the month.
  - c. In the event that BWXT in any month fails to both consume and pay for a minimum of 500,000 gallons multiplied by the number of days in the month, the Authority will pay the City the sum of i) the Monthly Debt Service, as defined below, plus ii) the amount of water actually consumed in that month. In the event that the Authority later recovers from BWXT

the minimum payment specified under the agreement with BWXT, the Authority shall pay the City the amount that otherwise would have been due the City under paragraphs 5.a. and 5.b. above less sums previously paid under this paragraph.

- d. Notwithstanding anything in this Supplement or the Contract to the contrary, in the event that the City restricts the amount of water that the Authority may purchase pursuant to Section VIII.B. of the Contract or reduces the amount of water that the Authority may purchase pursuant to paragraph 6 below, and under such restrictions or reductions the City provides the Authority with less than the minimum amount of water specified in paragraph 1, above, then the Authority shall pay for the greater of i) the water actually consumed or ii) the amount of water made available to the Authority for consumption under the restrictions at the billing rates calculated pursuant to the terms of the Contract.

For purposes of this paragraph 5, Monthly Debt Service shall mean the actual payments made by the City in a calendar year for the debt incurred by the City related to the construction of the Route 460 water line as specified in the Wiley & Wilson Feasibility Study by the number of months in which payments are made during said calendar year.

- 6. As provided in paragraph 1. above, the primary purpose of the City selling water to the Authority under this Supplemental Agreement is to meet the growth and future development needs of existing businesses in the Route 460 East/Mt. Athos Service Area. The existing businesses that are expected to use the bulk of the water supplied under this Supplemental Agreement are BWX Technologies ( an estimated average of a minimum of 500,000 gallons of water per day and a maximum of 1,000,000 gallons of water per day) and Framatome (an estimated average of 50,000 gallons of water per day). In the event either of these businesses decides it does not wish to purchase water from the Authority, the City shall have the right to reduce the amount of water being sold to the Authority under this Supplemental Agreement by the amount of water being sold to the Authority for such business's use. Further, the Authority and the County agree that none of the water supplied under this Supplemental Agreement can be sold to a new retail/commercial facility or complex containing 50,000 square feet or more of retail/commercial floor space in the Route 460 East/Mt. Athos Service Area without the prior written consent of the Lynchburg City Council. Notwithstanding anything herein to the contrary, the County does not need to obtain the City's approval to authorize the development or construction of any retail/commercial establishment to which potable water is provided by the Authority or the County by a source of supply other than water purchased from the City.
- 7. The Authority, City and County agree that upon completion of the water project to serve the Route 460 East/Mt. Athos Service Area, that discussions will be initiated on the feasibility and associated requirements for the City providing



potable water capacity for the development of the Route 460 East corridor, including retail/commercial revenue producing facilities, as more completely described in the Wiley & Wilson Feasibility Study, which discussions shall include the possibility of revenue sharing between the City and the County.

8. The City chooses not to participate in construction of joint facilities within Campbell County at this time, reserving the right to negotiate joint use capacity at a later date, all pursuant to Section VIII.D. of the Contract. Should the City desire to purchase capacity for future sales to other political subdivisions, a separate implementation agreement outlining terms, including capacity rights and cost sharing, shall be negotiated.
9. Except as modified herein, all others terms of the Contract shall be applicable to the Route 460 East/Mt. Athos Service Area, including the "Water Charges" as set forth in Section V. of the Contract, which charges are valid until renegotiated pursuant to the terms of the Contract.

CAMPBELL COUNTY UTILITIES  
AND SERVICE AUTHORITY

BY: Wanda Ballone  
Chairman

ATTEST:

James W. L...  
Secretary

CITY OF LYNCHBURG, VIRGINIA

Bonnie Sorek, Deputy City Manager  
for City Manager

ATTEST:

Cathleen W. Kist  
Clerk of Council

COUNTY OF CAMPBELL, VIRGINIA

[Signature]  
County Administrator

ATTEST:

Catherine H. Moore  
Deputy Clerk